

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
BRUCE EDWARD LEVELL,)	CASE NO. 10-95107 - MHM
SHARON DIANE LEVELL,)	
)	
Debtors.)	
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SUNTRUST BANK,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 11-5112
BRUCE EDWARD LEVELL,)	
SHARON DIANE LEVELL,)	
)	
Defendants.)	

**ORDER ON DEFENDANTS'
OBJECTION TO PLAINTIFF'S NOTICE OF DISMISSAL**

This adversary proceeding commenced when Plaintiff filed its complaint objecting to Debtors' discharge and seeking a determination that Plaintiff's claim is nondischargeable (the "Complaint"). On March 30, 2011, Defendants filed a motion to dismiss the Complaint under Fed. R. of Civ. Proc. 12(b)(6), incorporated in Bankruptcy Rule 7012, on the ground that it fails to state a claim for relief. Plaintiff filed no response to Defendants' motion to dismiss. Instead, on April 29, 2011, Plaintiff filed a Notice of Dismissal under Fed. R. of Civ. Proc. 41(a)(1), incorporated in Bankruptcy Rule 7041 ("Rule 41(a)(1)") (Doc. No. 6), to which Defendants objected (Doc. No. 7) (the


“Objection”). In the Objection, Defendants complain that Plaintiff impugned their reputations without factual support and should not be allowed to voluntarily dismiss the Complaint without a *retraxit* admission that the allegations in the Complaint were groundless.

The plain language in Rule 41(a)(1) expressly provides for voluntary dismissal without a court order if the notice of dismissal is filed before an answer or motion for summary judgment is filed by the defendant. The court is without the discretion to prevent dismissal. *Carter v United States*, 547 F2d 258 (5th Cir 1977); *Williams v Ezell*, 531 F2d 1261 (5th Cir. 1976); *Matthews v. Gaither*, 902 F. 2d 877 (11th Cir. 1990). Defendants, however, are not without remedy. Aside from sanctions, under §523(d), Defendant may seek a determination that Plaintiff’s position was not substantially justified and obtain an award of costs and reasonable attorneys fees. Accordingly, it is hereby

ORDERED that Plaintiff’s Notice of Dismissal is effective under Rule 41(a)(1) to voluntarily dismiss this adversary proceeding: this proceeding is *dismissed without prejudice* to Defendants’ §523(d) rights.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff’s attorney, Defendant’s attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 2nd day of August, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE